PROCEEDINGS OF THE COMMON COUNCIL
IN REGULAR SESSION
TUESDAY, MAY 23, 1989

CITY OF FORT WAYNE, INDIANA
JOURNAL OF THE PROCEEDINGS
OF THE COMMON COUNCIL

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MET IN THE COUNCIL CHAMBERS Tuesday EVENING May 23, 19 89, IN Regular SESSION. PRESIDENT Charles B. Redd IN THE CHAIR, COUNCIL ATTORNEY Stanley A. Levine, AND Sandra E. Kennedy CLERK, AT THE DESK, PRESENT THE FOLLOWING MEMBERS _____ VIZ:

BRADBURY P, BURNS P, GiaQUINTA P,
HENRY _____, LONG P, REDD P,
SCHMIDT _____, STIER _____, TALARICO P,

ABSENT: 3

COUNCILMEMBER: Henry, Schmidt,
Stier, _____,

THE MINUTES OF THE LAST REGULAR May 9, 1989,
_____, 19___,
SPECIAL _____, 19___,

SESSION HAVING BEEN DELIVERED TO THE COUNCIL, WERE, ON MOTION, APPROVED AND PUBLISHED.

THE COUNCIL THEN ADJOURNED.

CERTIFICATE

I hereby certify that I am the duly elected, acting and incumbent City Clerk of Fort Wayne, Indiana and as such the custodian of the records of the Common Council of said City and that the above and foregoing is the true, full and complete record of the proceedings of the Common Council of the City of Fort Wayne, Indiana for its Regular Session, held on Tuesday the 23rd day of May, 1989, that the numbered ordinances and resolutions shown therein were duly adopted by said Common Council on said date and were presented by me to the Mayor of the City of Fort Wayne and were signed and approved or disapproved by said Mayor as and on the dates shown as to each such ordinance and resolution respectively; and that all such records, proceedings, ordinances, and resolutions remain on file and record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 30th day of May, 1989.

SANDRA E. KENNEDY, CITY CLERK

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

23 May 1989

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
CityCounty Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Bradbury:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. G-89-04-16

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
23rd day of May 1989.

Robert Hutner
Secretary

FACT SHEET

G-89-04-16
BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE	APPROVAL DEADLINE	REASON
Zoning Ordinance Amendment		

DETAILS

Specific Location and/or Address

N/A

Reason for Project

This amendment would allow the Board of Zoning Appeals to approve railroad switching yards for trucking purposes as a Special Use.

Discussion (Including relationship to other Council actions)

15 May 1989 - Public Hearing

See Attached Minutes of Meeting

22 May 1989 - Business Meeting

Yvonne Stam declared a conflict of interest and abstained from participating in any discussion or voting on this matter.

Motion was made and seconded to return the ordinance to the Common Council with a DO PASS recommendation.

Of the eight (8) members present, six (6) voted in favor of the motion, one (1) abstained, and one (1) did not vote.

Motion carried.

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	City Wide Other Areas
Applicants/ Proponents	Applicant(s) Community & Economic Development City Department Other
Opponents	Groups or Individuals Tom Yoder, attorney for Norfolk & Southern Railroad Basis of Opposition -it would retroactively affect a project already proposed - felt this amendment was special legislation
Staff Recommendation	[X] For [ ] Against Reason Against
Board or Commission Recommendation	By [X] For [ ] Against [ ] No Action Taken [ ] For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	[ ] Pass [ ] Other [ ] Pass (as amended) [ ] Hold [ ] Council Sub. [ ] Do not pass

DETAILS

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	Such uses would require Board of Zoning Appeals Public Hearing.

(This space for further discussion)

Project Start Date 25 April 1989

Projected Completion or Occupancy Date

Fact Sheet Prepared by Date 23 May 1989
Pat Biancaniello
Dolores Espinosa

Reviewed by Larry Maglioza Date 5-23-89

Reference or Case Number

a. Bill No. Z-89-04-16 - Petition #392
Section 33-13 - Special Uses

Greg Purcell, Executive Director of Community & Economic Development appeared before the Commission. Mr. Purcell stated that this is amendment to the Zoning Ordinance text which would amend Section 33-13 and require a Special Use permit in certain districts, specifically M-1, M-2 & M-3 districts, for anyone wanting to have an inter-model freight facility, a railroad switching yard for truck trailers to come to the Board of Zoning Appeals. Mr. Purcell stated that this has been brought about as a result, of what we consider a new technology, a change in the technology for transportation use. He stated that both truck facilities and rail facilities are presently allowed in these zoning districts, but we now have a situation where rail cars are being substituted now for truck trailers which actually have rail wheels on them and are being transported. He stated that there is a current facility operating on the southwest side of town and that facility is proposing to expand. He stated that they had an opportunity to meet with the developers of that facility and the expansion area would be bounded by Ardmore, Nuttman and Engle Road. He stated that the current zoning ordinance would allow the use they are proposing to go in if they can meet the technical requirements, water, sewer, right-of-way, etc. He stated that if they brought in a proper plan the city would be in a position of having to issue them an Improvement Location Permit and allow the development to occur. He stated that because of the concern of the area residents, they have taken a look at this use which is rather intense and making an amendment to the zoning ordinance that would require this kind of use to be brought to the Board of Zoning Appeals, and that would require a public hearing. It would give the surrounding property owners a chance to voice their concerns and give the city a chance to take a look at special conditions which may be necessary in order to mitigate a detrimental impact to the surrounding properties. He stated if the impact would be too detrimental the use could be denied. He stated that they have met with Norfolk and Southern Railroad and they do have preliminary plans and they have looked at the plans and the city departments have made comments in terms of the existing laws. He stated that they have informed Norfolk and Southern that they are proposing this change in the Zoning Ordinance.

John Shoaff stated that he wanted to be sure he was clear on what the ordinance does. He stated where it states "may permit" it also means that it may forbid, and it would basically give the Board of Zoning Appeals the power to turn down this particular special use.

Mr. Purcell stated that was correct. Mr. Purcell stated that without this amendment to the Zoning Ordinance there will be no requirement for a public hearing.

Janet Bradbury questioned if the reason this was coming to their

attention now was because it is a new technology.

Mr. Purcell stated that it really is something new. He stated that historically there have been trucks on rail cars, but they were loaded on flatbed cars. He stated that the new technology you have the wheels that go on the railroad tracks and on the trailer rigs themselves. He stated that it makes it more efficient in order to be able to utilize rail and truck traffic and have that inter-model transfer point to go from one means of conveyance to another means of conveyance.

Steve Smith questioned that if the current operation of Norfolk and Southern is illegal and if they continue to operate there we would be proceeding to enforce discontinuance of that. He questioned then if the zoning amendment that was being proposed would give the city the right if they relocate it to an M-1, M-2 or M-3 site to still have control over it, where we would not otherwise.

Mr. Purcell stated that was correct.

The following people spoke in favor of the amendment stating the fact that they live by the existing inter-model switching yard and gave a list of hazards and problems that have risen due to the operation.

David Long, 4th District Councilman appeared before the Commission to speak in favor of the amendment. He stated that this amendment would give the city a means of controlling this type of use in the city limits. He stated this amendment would give the city the flexibility to deny a permit of this type if it finds that the use would be unduly detrimental to the surrounding area. He stated that the use presently at Nuttman and Brooklyn has created absolute chaos for the area residents.

- blocking traffic for extensive periods of time
- noise pollution - which can continue up to 24 hours a day
- devalues the residential properties in area
- dust & fumes
- safety factors in blocking the tracks prohibiting ambulances fire vehicles and police to pass
- blocking school bus traffic

David Fuelleman, President, Indian Village Assn
Burt Seitz, 3423 Laredo Av
Jenny Houth, President, Westfield Neighborhood Assn
Mark Kiley, 2119 Wawonaissa
Forest Butts, 4010 Nokomis Road
Jim Conner, 3926 Mound Pass
Loretta Serovey, 2311 Ontario
Dave Brock, 3916 Enola Ct
Cynthia Bryant, 2535 Brooklyn Av
John Hamrick, 3608 Algonquin Pass
Gary Collins, 4001 Indian Hills Dr

Kevin Salge

Thomas W. Yoder, Attorney for Norfolk & Southern Railroad appeared before the Commission in opposition to the amendment. Mr. Yoder stated that N&W has been acquiring options and is proposing to install the improvements which constitutes the subject matter of this proceeding. Mr. Yoder stated that the major concern of N&W about the proposed amendment and the statements made that evening was, he believed, the intention to cause this proposed amendment, if it passes to operate retroactively on a project that is already in the process of execution. Mr. Yoder stated he did not have a complete grasp of the details of the project, but he felt he does know a good deal about it. He stated that he could represent it to the Commission in good faith. He stated that a good many acres of land have already been optioned on the north side of the tracks on Nuttman Avenue, with the idea of implementing this project. He stated that at least 4 sizeable parcels have been optioned and 1 or 2 that are relatively small. He stated that at least one of the options as of now has been exercised constituting a binding contract between Norfolk & Western and the sellers of the property. He stated that obviously N&W cannot now default on the contract, without incurring the risk of legal liability. He stated also this project has been moving along now for some weeks. He stated he was not aware that a formal application had been made for permits, but initially there have been contacts between Norfolk Southern and N&W people with the appropriate departments of the City of Fort Wayne. He stated that preliminary plans have been submitted and based now attempts are being made to tailor those specifications to meet existing city requirements. He stated that what they have is a project that is not just a figment of someone imagination, it is a project that is in the process of being carried forward. He stated that as a lawyer he wanted to state that if he grasped the flavor of most of what was said that evening, he thought that the primary motivation behind the proposed amendment is to try to stop this project. He stated that he did not think that any of the lawyers that were present that evening are going to have to exercise their imagination too much to realize straight off that you may have a serious problem here not only of retroactivity but also of special legislation. He stated that this area has been in use as commercial establishments or industrial establishments for many years. He stated that the area that N&W is now acquiring is presently zoned to accommodate this use.

Janet Bradbury stated that Mr. Yoder indicated that this was not a new technology being implemented by the railroad.

Mr. Yoder stated that it is relatively new technology but there is nothing new about this particular type of facility. He stated that the existing facility has been in place for the last 2 years and was questioning the concern now just being voiced.

Janet Bradbury stated that the people seem to be relating that

this facility has increased in volume and in doing so the noise and pollution have increased over the last two years. Ms. Bradbury stated that the amendment does not deal with the existing facility but deals with switching yards in general and all M-1, M-2 & M-3 districts.

Steve Smith stated that the staff comments state that the current use that they are operating is illegal since it is located on land that are zoned R-1 & M-2.

Mr. Yoder stated he was unaware of that. He stated that he questioned Mr. Donahue, the manager of the present operation, if in his experience if it has been suggested to him that he has been operating illegally. He stated that Mr. Donahue said no, and that it was the first that he (Mr. Yoder) had heard of it.

Steve Smith stated that he would suggest that if they were waving the issue of special legislation at the Commission as a red flag to be concerned about a law suit, he would suggest that special legislation is in order when we find companies operating defying the existing laws of the municipality.

There was no one else present who wished to speak in favor of or in opposition to the proposed amendment.

April 24, 1989

Amend the Zoning Ordinance

Section 33-13 Special Uses in Specified Districts

(J) In M-1, M-2, and M-3 Districts, the Board may permit a railroad switching yard for truck trailers.

C& ED COMMUNITY & ECONOMIC DEVELOPMENT

MEMORANDUM

TO: City Plan Commission

FROM: V. C. Seth

SUBJECT: Zoning Text Amendment

DATE: May 11, 1989

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It will be appropriate to give you a brief background on the proposed zoning text amendment.

Recently Norfolk and Southern Railroads in connection with Triple Crown Trucking Company started an operation on the south side of the railroad tracks between Brooklyn Avenue and Nuttman Avenue. The use is primarily transportation of semi-trailers to an from that location and switching of semi-trailers between trains for various destinations. The current use is illegal since it is located on lands that are zoned R-1 and R-2 residential districts.

It is our opinion that such inter-model freight transfer facilities are a very intensive uses and should require public review so that appropriate conditions can be placed to ameliorate its adverse impacts on the surrounding areas. The proposed amendment to require Special Use approval through the Board of Zoning Appeals accomplishes that purpose.

I would also like to point out that after Councilman Long introduced this amendment, representatives from Norfolk and Southern visited with city staff for an informal review of a proposed location to relocate their current use between Brooklyn Avenue and Nuttman Avenue to a site zoned M-2 and bounded by Nuttman, Ardmore, Engle and the railroad tracks. We have transmitted comments of all city departments to Norfolk and Southern. We have also informed them of the proposed zoning text change and of the Plan Commission Public Hearing on this matter.

VCS/de

Attachment

C& COMMUNITY & ECONOMIC DEVELOPMENT

ED *MEMORANDUM*

TO: Plan Commission

FROM: V. C. Seth

SUBJECT: Norfolk Southern/Triple Crown

DATE: May 22, 1989

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Following my memorandum of May 11, 1989 on the zoning text amendment, the city staff has conducted a survey of the area used by Triple Crown between Brooklyn and Nuttman. It appears that Norfolk Southern has acquired additional land south of the railroad righ-of-way. While the railroad right-of-way is zoned R-2 from Nuttman to McKinley and R-1 from McKinley to Brooklyn, the land south of the railroad right-of-way is zoned R-2 between Nuttman and McKinley and M-3 between McKinley and Brooklyn.

It is my understanding from talking with David Wright that while the city may not be able to control the railroad's use of land within its right-of-way, the railroad must comply with the zoning regulations beyond its right-of-way limits.

It appears from the survey that the mobile office is located in the R-2 residential zoned land. We have no record of any building permit being issued for this or for parking semi-trailers in the R-2 zoned area. For this use to be legal, it must receive a use variance approval from the Board of Zoning Appeals.

VCS/de

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

11 May 1989

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
CityCounty Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Bradbury:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. Z-88-07-20

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
11th day of May 1989.

Robert Hutner
Secretary

FACT SHEET

Z-88-07-20
BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE: Zoning Ordinance Amendment From R-1 to B-1-B

APPROVAL DEADLINE:

REASON:

DETAILS

Specific Location and/or Address
The East side of Lima Road from Washington Ctr Road, north to Ludwig Road.

Reason for Project

Commercial Development

Discussion (Including relationship to other Council actions)

18 July 1988 - Public Hearing

Minutes of Meeting are Attached

25 July 1988 - Business Meeting

Motion was made and seconded to return the ordinance to the Common Council with a DO PASS recommendation, subject to the petitioner satisfying the following conditions.

1) Provide a revised legal description.

2) Submit a landscape plan for the perimeter of the petition area (where it abuts residential properties), for the approval of the C&ED Landscape Architect. This landscape buffer should include both landscape plant materials and fencing, and should consist of a 20 to 30 ft wide perimeter screen of 5 to 6 ft high wooden fence located 20 to 30 ft from the lot lines where plantings are to be provided.

3) Petitioner is to provide a recorded document, in a form acceptable to the Commission's attorney, that provides for the

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	City Wide Other Areas
Applicants/ Proponents	Applicant(s) Property Owners Listed On Petition City Department Other
Opponents	Groups or Individuals Bill Swisher, Pres Ludwig Pk Association Basis of Opposition -traffic congestion -devalue residential property in area
Staff Recommendation	[X] For [ ] Against Reason Against
Board or Commission Recommendation	By [X] For [ ] Against [ ] No Action Taken [ ] For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	[ ] Pass [ ] Other [ ] Pass (as amended) [ ] Hold [ ] Council Sub. [ ] Do not pass

DETAILS

following items:
a) Grant of a forty (40) foot wide ingress/ egress easement along the front of the subject property, to be used as a frontage road. (Such frontage road to serve as access for all properties and not necessarily required to be a full 40 feet on each parcel.

b) Construction, and maintenance of such frontage road to applicable City Standards, when directed to do so by the City of Fort Wayne, and upon elimination of residential use of the individual property.

c) Any existing driveways shall be subject to review and closure, by the owner, at the discretion of the Traffic Engineering Department of the City of Fort Wayne.

d) Any obstruction to the frontage road including sight obstructions, shall be removed at the owners expense.

NOTE: On January 9th of this year the Commission granted the petitioners a 60 day extension in which to satisfy the conditions. On February 27th the petitioners attorney submitted a letter of commitment agreeing to comply with the landscape buffering and on March 27th the frontage road document was submitted. One property owner has refused to participate in the frontage road agreement, and has not complied with the conditions placed by the Plan Commission.

The Plan Commission at their April 24, 1989 Business Meeting voted to amend the original petition by deleting from the petition the property of the petitioner who would not comply with the conditions of the Commission.

Of the nine members present, eight (8) voted for the motion, one (1) did not vote. Motion carried.

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start Date 17 June 1988

Projected Completion or Occupancy Date 11 May 1989

Fact Sheet Prepared by Date 11 May 1989

Patricia Biancaniello

Reviewed by Date May 15, 1989

Reference or Case Number

c. Change of Zone #357
From R-1 to B-1-B
Property fronting on the East side of Lima Road from Washington Center Road north to Ludwig Park Drive.

Pete Mallers, attorney, appeared before the Commission. Mr. Mallers stated that there is a total of 16 parcels and 14 owners. He stated that there are 3 lots in between Ludwig Park Drive and Orlando Drive and 4 lots to the south of Orlando Drive, all of which are part of Ludwig Park Addition. He stated the remaining lots from this point, south to Washington Center Road are not a part of any subdivision. He stated that it is the petitioners belief that the Lima Road Corridor is well suited for commercial development. He stated that it is becoming increasingly commercial and the west side, although not part of the city, has been rezoned for commercial purposes including a shopping center development. He stated that they feel that the property is not best suited for residential use, and that the highest and best use for the land is limited commercial. He stated that the Comprehensive Plan indicates support for limited commercial use along this corridor. He stated that the approval by staff is conditioned upon the submittal of a landscape plan which they are more than willing to do. He stated that the second condition is that of a frontage road concept. He stated they are willing to comply with that condition also. He stated though that he would like to discuss two minor qualifications to the frontage road condition. He stated that he would like to confirm that the city would not require the construction of a frontage road until such time as a commercial development plan has been proposed. He stated that they do have several residential structures on the properties and it may be some time before those parcels of land are sold and developed commercially. He stated that the second qualification is in regard to the lots to the south fronting on Lima Road. If required to put in a 40 foot frontage road and grant it as an easement for public use, it would effectively deprive these lots of any use at all. He stated that they are willing to comply with the frontage road requirement, however they would like some assurance that at such time as development occurs to the south end of the tract that arrangements can be made so that there will not be an effective taking of all this land. He stated that he was aware no commitment could be made at this point, but they feel due to the configuration of these lots that some sort of consideration in that regard would be necessary. He stated they would like some assurance that this development would be handled on a case by case basis.

Yvonne Stam questioned if the lots in Ludwig Park were covered by a Restrictive Covenant that would restrict there use to single family residential and if they had amended the restrictive covenants.

Pete Mallers stated there is a covenant on the lots in Ludwig Park but was not sure if it restricted it to single family, it does restrict it to residential use. He stated they had not

gotten the covenants lifted, but they were well aware of that as a requirement. He stated that they would like the Commission to consider their petition despite the restrictive covenant. He stated that they are aware that the Commission considers restrictive covenants to be private contracts between the owners in the subdivision. He stated they will consider that their concern and hope the Covenant will not effect the Commission's decision.

The following people spoke in opposition to the proposed rezoning.

Bill Swisher, 904 Pelham Drive, President of the Ludwig Park Assn
Nancy Kloha, 816 Ludwig Park Drive, appeared before the Commission and presented her opposition in the form of a letter to the Commission.
Robert Pranger, 726 Ludwig Park Drive
Tom Henry, 2211 Schomburg Drive, 3rd District Councilman
John Talarico, 1430 Pelham Drive
Bob Myers, 1015 Orlando Drive
John Clifton, attorney for the Ludwig Park Association

Mr. Clifton presented the Commission with a petition containing 350 signatures of the people in Ludwig Park in opposition to the rezoning. Mr. Clifton stated that 7 of the lots are in the Ludwig Park Subdivision and subject to the restrictive covenants. He stated that in order to waive those restrictions it would take at least 3/4 of the residents within the Ludwig Park Subdivision to sign. He stated that with regard to the land located north of Orlando Drive, Lots 54 & 55, the people interested in developing are proposing a Burger King Restaurant on those lots. He stated that they have sought to avoid a designation of "spot zoning" and have included therein the remaining lots in Ludwig Subdivision immediately south, Lots 86, 87, 88, & 89 along with approximately 9 parcels of metes and bounds property, which he understood was under option to one individual at the present time. He stated that the Commission could imagine the traffic congestion which would result from the allowance of a change of zoning to a B-1-B District and all of the things that go along with the operation of a fast food restaurant, particularly adjacent to homes in a residential subdivision. In addition, people who go to restaurant, have little regard if they are on foot and out of their cars, whose property they walk on or whose property they throw their trash onto. He stated that in addition the odor of a fast food restaurant is not something that can be stopped by shrubbery or planting or other types of barriers. He stated further the real particular problem they find is the fact that lot 55 and lots 87 & 86 are not located along Lima Road, they begin the progression of a proposed commercial use down a residential street. He stated that for that reason they fail to see if this were to be permitted why someone would come back and want 85, 85, 56, 57, & 58 rezoned for commercial. He stated that because this neighborhood has stood up for its continued existence and fought encroachment and unwise development in the

past, it has maintained its vitality. He stated that the western boundary line of the property from a buffer standpoint is Lima Road. He stated the problem is that when you begin coming down Orlando Drive with commercial uses that you are going to wind up with the total erosion of the neighborhood.

Nancy Maines, 6024 Lima Road, stated she was not in the Ludwig Park Subdivision. She stated that this property is no longer a residential area. She stated they have a Signature Inn across the road and gas stations to the south, a new restaurant. She said for the people on Lima Road it is no longer a residential neighborhood.

In rebuttal Pete Mallers stated that Ludwig Park Association is a fine association. He stated that they recognize the concerns of the association but they also recognize that there is certain property that is more suitable for particular uses than others. He stated that several of the lots that are part of the petition are vacant. He stated that lots 54, 86, 87 & 88 are all vacant, and he seriously questioned whether or not those lots will ever have residential development on them. He stated that the reason for the petition being as extensive as it is was in order to avoid spot zoning, they felt that this would provide for orderly and responsible growth and development. He requested that his petition not be compared to prior petitions for rezoning in the area. He stated that with regard to traffic congestion as part of their plan, which has not been submitted, they are not intending to allow access from or to Ludwig Park Drive or Orlando Drive. He stated that the frontage road concept is being implemented to minimize the traffic congestion. He stated that they are willing to withdraw from the petition Lots 55, 86 & 87. He stated that leaves only the lots that are contiguous to Lima Road as part of the petition. He stated that he would respectfully request the Commission to consider the goals of the Comprehensive Plan, they believe that this is going to accommodate the need and desire for orderly and responsible growth. He stated that they respectfully request they consider the highest and best use for the property. He stated there are vacant lots that will not be developed for residential uses and are already commercial uses within this tract. He stated that the west side of Lima Road is extensively commercial, Washington Center Road is extensively commercial. He stated that this is to be a commercial corridor that is considered the best and highest use. He stated that if there are restrictive covenants that apply to any portion of this property they are willing to deal with them and would request the Commission not to consider in any negative light because of the restrictive covenants, that is the developer's problem.

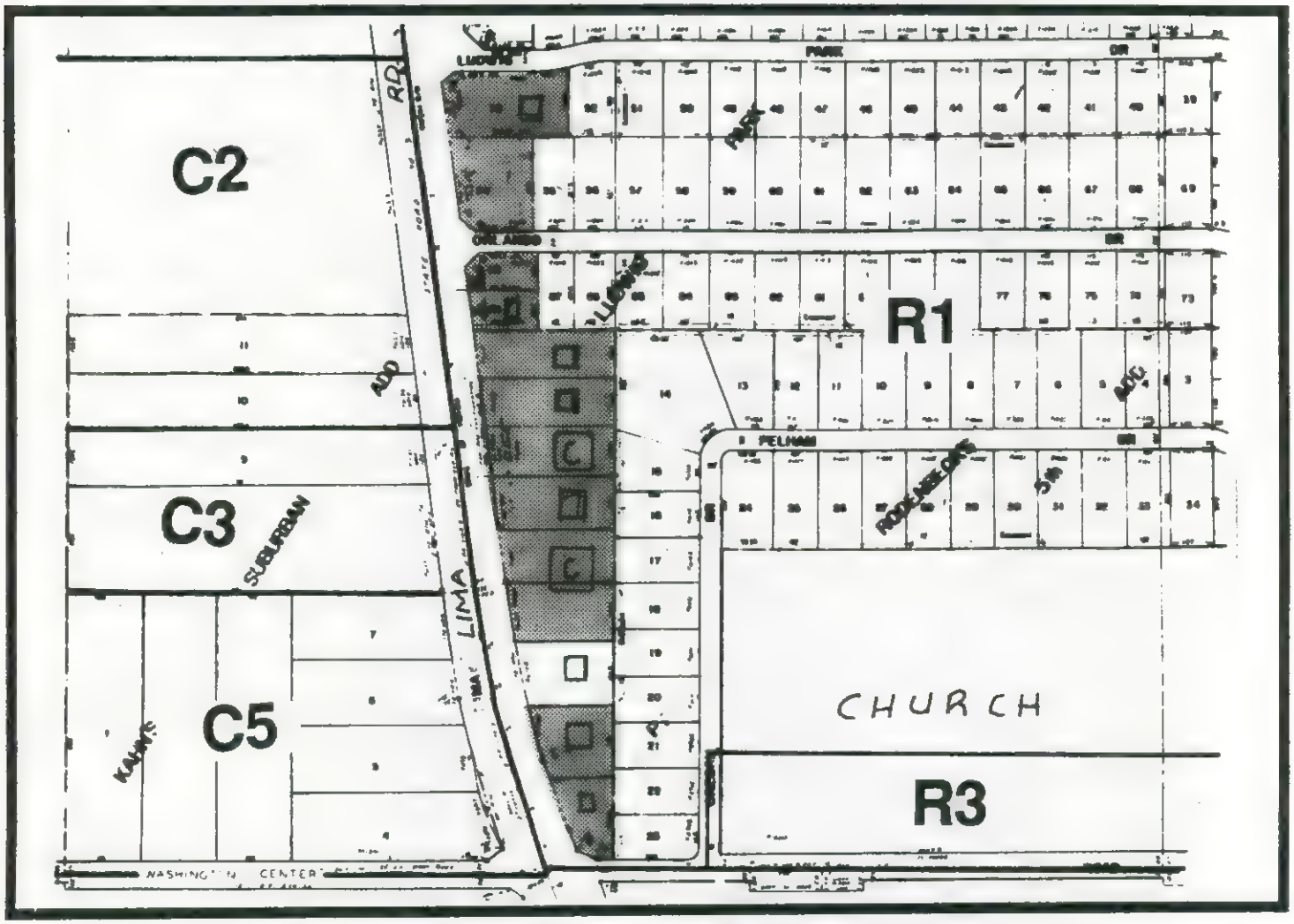
There was no one else present who wished to speak in favor of or in opposition to the proposed rezoning.

REZONING PETITION #357

A PETITION TO AMEND THE ZONING MAP BY RECLASSIFYING THE DESCRIBED PROPERTY FROM A R1 DISTRICT TO A B1B DISTRICT.

MAP NO. K-38

COUNCILMANIC DISTRICT NO. 3



ZONING:

R1 RESIDENTIAL DISTRICT

R3 RESIDENTIAL DISTRICT

C2 PLANNED SHOPPING CENTER

C3 PLANNED GENERAL COMMERCIAL

LAND USE:

☐ *SINGLE FAMILY*

[C] *COMMERCIAL*

lw

SCALE: 1" = 200'

DATE: 6-24-88

N

RESOLUTION OF ZONING ORDINANCE AMENDMENT RECOMMENDATION

WHEREAS, the Common Council of the City of Fort Wayne, Indiana, on July 12, 1988 referred a proposed zoning map amendment to the City Plan Commission which proposed ordinance was designated Bill No. Z-88-07-20.

WHEREAS, the required notice of public hearing on such proposed ordinance has been published as required by law; and,

WHEREAS, the City Plan Commission conducted a public hearing on such proposed ordinance on July 18, 1989.

NOW THEREFORE, BE IT RESOLVED that the City Plan Commission does hereby recommend that this ordinance be returned to the Common Council with a DO PASS recommendation based on the Commission's following "Findings of Fact":

(1) the grant will not be injurious to the public health, safety, morals, and general welfare of the community;

(2) the use or value of the area adjacent to the property included in the rezoning will not be affected in a substantially adverse manner;

(3) the need for the rezoning arises from some condition peculiar to the property involved and the condition is not due to the general conditions of the neighborhood;

(4) the strict application of the terms of the zoning ordinance will constitute an unusual and unnecessary hardship if applied to the property for which the rezoning is sought; and,

(5) the grant does not interfere substantially with the comprehensive plan adopted under the 500 series of the metropolitan development law.

BE IT FURTHER RESOLVED that the Secretary is hereby directed to present a copy of this resolution to the Common Council at its next regular meeting.

This is to certify that the above is a true and exact copy of a resoluton adopted at the meeting of the Fort Wayne City Plan Commission held July 25, 1989.

Certified and signed this
11th day of May 1989.

Robert Hutner
Secretary

Peter G. Mallers, II, attorney for the petitioners, requests a change of zone from R-1 to B-1-B.

Location:	On the east side of Lima Road from Washington Center Road, north, to Ludwig Park Drive.		
Legal:	See file		
Land Area:	Approximately 12.649 acres		
Zoning:	R-1		
Surroundings:	North	R-1/B1B	Residential/Commercial
	South	IA	Commercial
	East	R-1	Residential
	West	County	Commercial
Reason for Request:	Not stated on petition		
Neighborhood Assoc.:	Ludwig Park		
Landscape:	Recommend requiring min. 6' ht. landscape screen against residential zoned properties to the east, and a min. 3' ht. landscape screen of parking areas from street view.		
Neighborhood Plan:	No comment.		
Comprehensive Plan:	The general land use policies of the Comprehensive Plan state that rezoning and development proposals should be compatible with existing and planned land uses and should not establish an undesirable precedent in the area to be developed. The goal in the North Sector, where this request is located, is for orderly growth. There are existing commercial uses along this section of Lima Road and commercial development is consistent with the Comprehensive Plan.		

Planning Staff Discussion:

This general area has seen a renewed interest in development over the past year or two. Most of the new development has occurred on the west side, under the Allen County Plan Commissions jurisdiction, however, there has been some development within the City's boundaries.

We are faced with a unique situation here in that we are concerned with the principles of responsible development and growth, but also concerned with the preservation of residential integrity and property values. Realistically, we believe that both objectives can be achieved.

The Comprehensive Plan indicates support for limited commercial uses along this corridor. We agree with that, and feel that B-1-B would offer the highest and best use possible for this land. There is also a need to address traffic flows and public safety concerns, which we feel can be adequately served by the frontage road concept.

While we support the petition as it affects the Lima Road frontage, we are also very concerned with the potential impact on abutting residential development. We feel that appropriate landscape buffering should be required, which would assist in preservation of property values, and to prevent the visible intrusion of some aspects of commercial/retail uses.

Recommendation: Conditional Approval, contingent upon the petitioners providing the following:

1) Submit a landscape plan for the east portion of the petition area (where it abuts residential properties), for the approval of the C.D. & P. Landscape Architect.

2) Petitioner is to provide a recorded document, in a form acceptable to the Commission's attorney, that provides for the following items:

a) Grant of an forty (40) foot wide ingress/egress easement along the front of the subject property, to be used as a frontage road.

b) Construction, and maintenance of such frontage road to applicable City Standards, when directed to do so by the City of Fort Wayne.

c) Any existing driveways shall be subject to review and closure, by the owner, at the discretion of the Traffic Engineering Department of the City of Fort Wayne.

d) Any obstruction to the frontage road including sight obstructions, shall be removed at the owners expense.

Reconsideration of a Rezoning Petition

Petitioner:	Peter G. Mallers, II, attorney for the petitioners.
Petition:	Z-88-07-20 From R-1 to B-1-B
Location:	On the east side of Lima Road from Washington Center Road, north to Ludwig Park Drive.
Land Area:	Approximately 12.649 acres.
Requested change:	Deletion of approximately 0.75 acres of property from the area of the requested rezoning.

Planning Staff Discussion:

The Plan Commission reviewed this petition in July of 1988. It was the determination of the Plan Commission that this request be granted a "Conditional Approval", contingent upon the petitioners satisfying certain conditions. Those conditions addressed the need for the deletion of three lots (as volunteered by the petitioner), submittal of a landscape plan that addressed buffering concerns where the petitioned parcels abut residential, and a frontage road agreement.

On Jan. 9th of this year, the Plan Commission granted petitioners a sixty day extension in which to satisfy the conditions. That extension was to expire in March. On Feb. 27 the petitioners attorney submitted a letter of commitment agreeing to comply with the landscape buffering requirement at such time as commercial development would take place. On March 27th, the frontage road document was submitted.

One property owner has refused to participate in the frontage road agreement, and has not complied with the conditions placed by the Plan Commission. This parcel in question is about 0.75 acres of ground located approximately 370 feet north of the Washington Center Road intersection. As this property would have participatory parcels on either side, its non-compliance has a major impact on the petition.

Due to the physical boundaries of the parcels in question, elimination of this one parcel defeats the concept of the frontage road to a certain extent. Two parcel located south would have to be developed with at least one separate access point. The remaining parcels to the north could still be developed with the frontage road.

The recommendation of the Driveway Subcommittee was to allow one permanent access point to the frontage road, with that access point to be located at the intersection of Orlando Drive. It was

felt that such implementation would compliment the county and State Highways plan for this stretch of Lima Road.

As there are no current plans for the development of these parcels, the full implementation of the frontage road can not be guaranteed. The elimination of this one parcel further segments the potential frontage road.

The Plan Commission has two apparent options. Due to the failure of all property owners to comply with the conditions imposed, the Commission could recommend denial. Eventually these parcels would probably re-petition for individual consideration, however, that alternative would lessen the potential impact of the frontage road.

The second option would be to allow the petitioners to delete the parcel. At some point in time, as commercial development takes place, this property owner would probably seek a rezoning. The problem that then occurs is that the Plan Commission would have set the stage for at least three accesses unto Lima Road, and would have decreased the need for full participation. A potentially better solution exists, in that the Plan Commission could approve the petition only for those properties north of the non-complying parcel. This solution would allow for commercial development to occur, and would limit non-commercial access points to what they are today. This would represent a more responsible development potential.

As the timeliness of the frontage road would be dependent on commercial development, limiting the area of potential development may be the best option.

Recommendation: Approval, contingent upon the petitioners providing a revised legal description deleting the non-complying parcel, and the parcels to the south.

1) The Comprehensive Plan supports limited commercial development along this corridor. Approval of this request, with the frontage road requirement would allow for appropriate development.

2) As there are no current plans for commercial development of this acreage, the full implementation of the frontage road is questionable as to timing. The deletion of this one parcel will have little impact on that time-frame.

President of the Common Council
City of Fort Wayne, Indiana

Gentlemen and Mrs. Bradbury:

Attached herewith are authenticated copies of the Board of Public Safety Regulatory Resolution Numbers:

76/89/E, 77/89/E, and 78/89/E

For the purpose of enforcement, please make this communication and the attached Regulatory Resolutions a matter of record and incorporate them into the minutes of the next Common Council Meeting.

Respectfully Submitted,

Michael McAlexander

Chairman, Board of Safety

R E T U R N C E R T I F I C A T E

(Regulatory Resolution No. 76/89/E, 77/89/E, 78/89/E,

I hereby certify that I did this 12th day of May, 1989 deliver to each, the City Traffic Engineer, the Chief of Police, the City Attorney, the City Clerk and the President of the Common Council of the City of Fort Wayne, Indiana respectively, a copy of the within Regulatory Resolution No. SEE ABOVE of the Board of Public Safety of the City of Fort Wayne, duly certified by me as Chairman of said Board, in accordance with the provisions of Section 17-4 of Chapter 17, of the Code of the City of Fort Wayne, 1986.

CHAIRMAN, Board of Safety

REGULATORY RESOLUTION NO. 76/89/E

(Adopted May 10, 1989, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)

DELETE:

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)

; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 8, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 10, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)
Maplecrest Road from Monarch Drive to State Blvd.

DELETE:

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)
State Boulevard from Coliseum Blvd. to Reed Road

REGULATORY RESOLUTION NO. 77/89/E

(Adopted May 10, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to _____

THRU STREET (EMERGENCY)

_____

_____

_____

_____; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 9, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 10, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

THRU STREET	(EMERGENCY)
High Street	from Runnion Avenue to Sherman Boulevard except at Runnion Avenue, St. Mary's Avenue and Sherman Boulevard

REGULATORY RESOLUTION NO. 78/89/E

(Adopted May 10, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to

NO PARKING 7 AM TO 4 PM SCHOOL DAYS ONLY (EMERGENCY)

; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 9, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 10, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

NO PARKING 7 AM TO 4 PM SCHOOL DAYS ONLY (EMERGENCY)

Woodmark Drive	--north side--	from 110' east of Reed Road to the eastern terminus
Woodmark Drive	--south side--	from 60' east of Reed Road to Jonquil Drive

President of the Common Council
City of Fort Wayne, Indiana

Gentlemen and Mrs. Bradbury:

Attached herewith are authenticated copies of the Board of Public Safety Regulatory Resolution Numbers:

79/89/E, 80/89/E, and 81/89/D

For the purpose of enforcement, please make this communication and the attached Regulatory Resolutions a matter of record and incorporate them into the minutes of the next Common Council Meeting.

Respectfully Submitted,

Michael McAlexander

Chairman, Board of Safety

R E T U R N C E R T I F I C A T E

(Regulatory Resolution No. 79/89/E, 80/89/E, 81/89/D,

I hereby certify that I did this 19th day of May, 1989 deliver to each, the City Traffic Engineer, the Chief of Police, the City Attorney, the City Clerk and the President of the Common Council of the City of Fort Wayne, Indiana respectively, a copy of the within Regulatory Resolution No. SEE ABOVE of the Board of Public Safety of the City of Fort Wayne, duly certified by me as Chairman of said Board, in accordance with the provisions of Section 17-4 of Chapter 17, of the Code of the City of Fort Wayne, 1986.

Michael McAlexander

CHAIRMAN, Board of Safety

REGULATORY RESOLUTION NO. 79/89/E

(Adopted May 17, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to

STOP INTERSECTION (EMERGENCY)

; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 10, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 17, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

STOP INTERSECTION (EMERGENCY)

River Run Court/River Run Trail --stop-- for Inland Trail

REGULATORY RESOLUTION NO. 80/89/E

(Adopted May 17, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)

; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 16, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 17, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

SPEED LIMIT 25 WHEN CHILDREN PRESENT (EMERGENCY)

Second Street --from Orchard Street to Wells Street

Third Street. --from Orchard Street to Wells Street

REGULATORY RESOLUTION NO. 81/89/D

(Adopted May 17, 1989)

WHEREAS, Section 17-4, Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986 authorizes the Board of Public Safety to make regulations to carry out its delegated authority thereunder; and,

WHEREAS, Section 17-4 of said chapter delegates to this Board authority to

NO PARKING (DELEGATED)

; and

WHEREAS, the City Traffic Engineer has, by written memorandum dated May 17, 1989, submitted to this Board his advice with regard to the regulation hereinafter adopted, which written memorandum is on file in the office of this Board:

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF PUBLIC SAFETY OF THE CITY OF FORT WAYNE, INDIANA

That, pursuant to the authority delegated to this Board by Section 17-4 of Chapter 17 of the Code of the City of Fort Wayne, Indiana of 1986, it is hereby ordered, effective May 17, 1989, and when signs are erected pursuant hereto giving notice thereof, that the FOLLOWING IS ESTABLISHED:

NO PARKING (DELEGATED)

Douglas Street	--south side--	from 135 ft. east of Lafayette Street to 105 ft. east thereof

THE CITY OF FORT WAYNE

CITY-COUNTY BUILDING • ONE MAIN STREET • FORT WAYNE, INDIANA 46802

11 May 1989

COMMUNICATIONS FROM THE CITY PLAN COMMISSION

The Common Council of the
City of Fort Wayne
CityCounty Building
One Main Street
Fort Wayne, IN 46802

Gentlemen and Mrs. Bradbury:

Attached hereto is the recommendation of the City Plan Commission on one (1) ordinance concerning the amendment of the Zoning Ordinance (General Ordinance No. G-06-80, amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, 1946.) The proposed ordinance is designated as:

Bill No. G-89-05-09

Respectfully submitted,

CITY PLAN COMMISSION

Certified and signed this
11th day of May 1989.

Robert Hutner
Secretary

FACT SHEET

G-89-05-09

BILL NUMBER

Division of Community Development & Planning

BRIEF TITLE	APPROVAL DEADLINE	REASON
Zoning Ordinance Amendment		

DETAILS

Specific Location and/or Address

N/A

Reason for Project

To clear up a source of confusion, since the Building Department and Land Use Management both issue a Certificate of Occupancy at the present.

Discussion (Including relationship to other Council actions)

17 April 1989 - Public Hearing

V.C. Seth, Director of Planning, stated that the Zoning Ordinance in several areas refers to a Certificate of Occupancy which is to be issued after a project is completed. He stated that the Building Department also issues a Certificate of Occupancy. He stated that in order to clear up the confusion created by two identically named certificates they are requesting that the city change its to "Certificate of Compliance". He stated that when this is changed in the ordinance we will issue our "Certificate of Compliance" to the Building Department and based upon that they will issued a Certificate of Occupancy.

There was no one else present who wished to speak in favor of or in opposition to the proposed amendment.

POSITIONS	RECOMMENDATIONS
Sponsor	City Plan Commission
Area Affected	City Wide Other Areas
Applicants/ Proponents	Applicant(s) Land Use Managment - C&ED City Department Other
Opponents	Groups or Individuals Basis of Opposition
Staff Recommendation	[X] For [ ] Against Reason Against
Board or Commission Recommendation	By [X] For [ ] Against [ ] No Action Taken [ ] For with revisions to conditions (See Details column for conditions)
CITY COUNCIL ACTIONS (For Council use only)	[ ] Pass [ ] Other [ ] Pass (as amended) [ ] Hold [ ] Council Sub. [ ] Do not pass

DETAILS

24 April 1989 - Business Meeting

Motion was made and seconded to return the ordinance to the Common Council with a DO PASS recommendation.

Of the nine (9) members present, eight (8) voted in favor of the motion, one (1) did not vote. Motion carried.

POLICY/PROGRAM IMPACT

Policy or Program Change	☐ No ☐ Yes
Operational Impact Assessment	

(This space for further discussion)

Project Start Date 17 April 1989

Projected Completion or Occupancy Date 11 May 1989

Fact Sheet Prepared by Date 11 May 1989

Patricia Biancaniello

Reviewed by Date May 15, 1989

Reference or Case Number

Proposed amendment to the Zoning Ordinance

Purpose: Over recent years there has been a certain amount of confusion among builders and contractors due to the fact that both the Building Department and the Division of Land Use Management issue Certificates of Occupancy. While the Building Department addresses the construction standards, the Land Use Management section verifies permitted uses and other Zoning Ordinance requirements.

One of the easiest solutions to this confusion is to change the name of one of these certificates. In order to expedite that change, these amendments are being proposed.

The proposed text is as follows:

Section 33-3

P. Certificate of ~~Occupancy~~ Compliance - A certificate issued by the Zoning Enforcement Officer stating that the occupancy and use of land or a building or structure referred to therein complies with the provisions of this chapter.

Section 33-14 B

(3) Limited Group Home, provided that not more than two (2) homes or halfway houses in any combination as outlined by definitions (BB), (FF), and (LL) of Section 33-3 shall be located in any block group and that no more than one group home or half-way house be located on a block face without a prior approval of the Board of Zoning Appeals (see definitions for block groups and block faces). In no event shall any of the above uses be contiguous. Certificate of ~~Occupancy~~ Compliance required in all cases.

Section 33-14 C

(9) Half-Way House, provided that not more than two (2) group homes or half-way houses in any combination as outlined by definitions (BB), (FF) and (LL) of section 33-3 shall be located in any block group and that not more than one group home or half-way house be located on a block face without prior approval of the Board of Zoning Appeals (see definitions for block groups and block faces). In no event shall any of the above uses be contiguous. Certificate of ~~Occupancy~~ Compliance required in all cases.

Section 33-16 B. (5)

k. In no event shall the Zoning Enforcement Officer issue an Improvement Location Permit or a Certificate of ~~Occupancy~~ Compliance for a use where the density exceeds one thousand (1,000) square feet per living unit for structures of three (3) to five (5) stories and one thousand two hundred fifty (1,250) square feet for structures two (2) stories or less except by action of the Board of Zoning Appeals.

Section 33-21 Certificate of ~~Occupancy~~ Compliance

A. No occupancy, use or change of use, except buildings incidental to non-residential agricultural uses shall take place until a certificate of occupancy shall have been applied for in writing and issued by the Zoning Enforcement Officer, in the following cases:

(1) Occupancy and use of a building or structure hereafter erected or enlarged.

(2) Change in use of an existing building or structure.

(3) Occupancy and use of vacant land except for the raising of crops.

(4) Change in the use of land to a use of a different classification except for the raising of crops.

(5) Any change in use of a nonconforming use.

B. If the purposed use is in conformity with the provisions of this chapter, the Certificate of ~~Occupancy~~ Compliance therefore shall be issued within three (3) days after the application for the same has been made; provided, however, that no Certificate of ~~Occupancy~~ Compliance shall be issued in connection with the construction, alteration, enlargement or moving of a building or structure until such construction, alteration, enlargement or moving shall have been completed. Each Certificate of ~~Occupancy~~ Compliance shall state that the building or proposed use of a building or land complies with all the provisions of this chapter.

C. All improvements in any subdivision duly recorded after July 1, 1964, shall be installed in a manner that complies with the general and detailed specifications handbook adopted by the Board of Public Works of the City on August 14, 1961, and any amendments thereof which have been or may be duly adopted by such board from time to time, before a Certificate of ~~Occupancy~~ Compliance shall be issued. A Certificate of ~~Occupancy~~ Compliance for any use lying within the jurisdiction of the City Plan Commission of the City shall not be issued until all contractual inspection costs

or inspection fees required by General Ordinance No. G-40, adopted on August 25, 1959, and appearing as Title 28A in the 1959 edition of the Municipal Code of the City, and any amendments thereof, have been paid to the Engineering permit office.

Section 33-44 A

No development in the Floodplain Districts shall take place unless the Zoning Enforcement Officer first grants an Improvement Location Permit. The Zoning Enforcement Officer shall review all applications for Improvement Location Permits for development including new construction, additions to existing construction, or other development to ascertain whether the proposed development lies in the Floodplain District. If the Permit Application pertains to property in the Floodplain District, then the applicant must meet the following criteria before receiving an Improvement Location Permit and Certificate of ~~Occupancy~~ Compliance.

Section 33-44 F

(2) The Director of the Division of Community Development and Planning or his/her representative, may attach such conditions in the granting of Improvement Location Permits and Certificate of ~~Occupancy~~ Compliance Permits as it deems necessary to further the purpose of this article. Any decision of the Director of the Division of Community Development and Planning or his/her representative, may be appealed to the Board of Zoning Appeals.

Section 33-47 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this article is considered reasonable for regulatory purposed and is based on engineering and scientific consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice or debris jams. This article does not imply that areas outside the Floodplain District as defined herein, will be free from flooding or flood damages. This does not create liability on the part of the State of Indiana, the Indiana Department of Natural Resources, the Board

of Zoning Appeals, the Plan Commission of the City of Fort Wayne, or any elected or appointed official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder. No Improvement Location Permit nor Certificate of ~~Occupancy~~ Compliance shall be granted for any development or any other kind of work in an area covered by this article unless the applicant first executes a document upon forms provided by the City holding the City and State harmless and waiving the City's and State's liability for any flood damage.